

AGENDA FOR THE BOARD OF ADJUSTMENT MEETING

February 27, 2015

I. **ATTENDANCE** - The Chair will call the meeting to order at 1:30 p.m. in the Council Chambers, 200 East Main Street, February 27, 2015.

II. **APPROVAL OF MINUTES** - The Chair will announce that the minutes of the January 30, 2015 meeting will be considered at this time.

III. **PUBLIC HEARING ON ZONING APPEALS**

A. **Sounding the Agenda** - In order to expedite completion of agenda items, the Chair will sound the agenda in regard to any postponements, withdrawals, and items requiring no discussion.

1. **Postponement or Withdrawal of any Scheduled Business Item** - The Chair will announce that any person having an appeal or other business before the Board may request postponement or withdrawal of such at this time.

2. **No Discussion Items** - The Chair will ask if there are any other agenda items where no discussion is needed...that is, (a) The staff has recommended approval of the appeal and related plan(s), (b) The appellant concurs with the staff's recommendations. Appellant waives oral presentation, but may submit written evidence for the record, (c) No one present objects to the Board acting on the matter at this time without further discussion. For any such item, the Board will proceed to take action.

B. **Transcript or Witnesses** - The Chair will announce that any applicant or objector to any appeal before the Board is entitled to have a transcript of the meeting prepared at his expense and to have witnesses sworn.

C. **Variance Appeals** - As required by KRS 100.243, in the consideration of variance appeals before the granting or denying of any variance the Board must find:

That the granting of the variance will not adversely affect the public health, safety or welfare, will not alter the essential character of the general vicinity, will not cause a hazard or a nuisance to the public, and will not allow an unreasonable circumvention of the requirements of the zoning regulations. In making these findings, the Board shall consider whether:

(a) The requested variance arises from special circumstances which do not generally apply to land in the general vicinity, or in the same zone;

(b) The strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land or would create an unnecessary hardship on the applicant; and

(c) The circumstances are the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought.

The Board shall deny any request for a variance arising from circumstances that are the result of willful violations of the zoning regulation by the applicant subsequent to the adoption of the zoning regulations from which relief is sought.

1. **V-2015-5: BIG BLUE RENTALS, LLC.** – appeals for a variance to reduce the required front setback from 20 feet to 5 feet in order to install parking and drive aisles in a Planned Neighborhood Residential (R-3) zone, at 178 Leader Avenue (Council District 3).

The Staff Recommends: **Approval**, for the following reasons:

a. Granting the requested variance should not adversely affect the subject or surrounding properties. The layout of the parking lot will be reviewed by LFUCG agencies to ensure the health, safety and welfare of the apartment occupants and that there will be no harm to the adjacent properties. Furthermore, the proposed parking lot expansion will be landscaped in accordance with the requirements of Article 18 of the Zoning Ordinance, similar to those for multi-family dwellings in the existing neighborhood.

b. Granting the requested variances will not result in an unreasonable circumvention of the Zoning Ordinance, as the parking lot expansion will permit the site to comply with the alternative parking requirement of Article 8-12(n) (for 0.9 spaces/bedroom) for this efficiency apartment building.

c. The relocation of the existing storm water basin underground, and the inability for a lot of this width to obtain a second "curb cut" are special circumstances that do not generally apply to other R-3 zoned properties. It is the intent of the Infill & Redevelopment regulations to allow reasonable accommodations for more efficient development in order to promote development that is compatible with existing neighborhoods.

d. Strict application of the Zoning Ordinance would create an unnecessary hardship on the appellant. This would have the effect of further limiting the available parking for the subject property, and it would be hard to recoup the investment in this property improvement.

e. The requested variances are not the result of any willful violation of the Zoning Ordinance; but, rather, are

consistent with the design of residential parking lots in this vicinity near University of Kentucky's campus.

This recommendation of approval is made subject to the following conditions:

1. The property shall be developed in accordance with the submitted application and site plan, allowing modifications, if required, by the Divisions of Engineering, Traffic Engineering, Solid Waste and Fire & Emergency Services. These divisions must approve this revised site plan prior to the issuance of any Zoning Compliance Permit.
 2. A Zoning Compliance Permit and a Building Permit shall be obtained by the applicant prior to construction.
 3. The variance shall be only for the purpose of providing pavement between the building line and the landscape buffer adjacent to the public sidewalk. No portion of the multi-family building on this lot shall be located closer than 20' to the right-of-way of Leader Avenue.
2. **V-2015-13: MELVILLE PARK, LLC** – appeals for a fence height variance from 4 feet to 6 feet in the front and side street sideyards in a Planned Neighborhood Residential (R3) zone, at 527 Willy Street (Council District 1).

The Staff Recommends: **Disapproval of the height variance for the fence in the front yard (along Willy Street)**, for the following reasons:

- a. There are no unique or special circumstances to the subject property that would justify the requested height variance for the fence in the front yard.
- b. Approval of this variance would be out of character with the majority of properties in the general vicinity, which do have front yard fences that are compliant with the current 4' fence height restriction found in Article 15 of the Zoning Ordinance.

The Staff Recommends: **Approval of the height variance in the side street side yard (along Smith Street)**, for the following reasons:

- a. Approval of the variance will not have an adverse impact on the public health, safety or welfare; furthermore, it will not be out of character with other corner properties in the general vicinity, which commonly have 6' fences in their side street side yards.
- b. Granting the requested variance will not be an unreasonable circumvention of the Zoning Ordinance because a 5' fence would have been permitted and a 1' variance is a reasonable allowance to retain the existing fence.
- c. The pre-existing 5' tall chain link fence is a unique circumstance that does not apply to most other properties in this neighborhood, or in the R-3 zone.
- d. If not granted, the appellant will have to remove 2' of fence height or re-align the fence to be at least 3' behind the right-of-way.
- e. The applicant was unaware of the need to obtain a fence permit, nor was he aware of the height restrictions for fences when he built the fence as a part of the overall renovations of the subject property.

This recommendation of approval is made subject to the following conditions:

1. The applicant shall obtain a fence permit for the existing fence from the Division of Building Inspection within 30 days of Board action.
 2. The fence in the front yard (along Willy Street) shall be removed or otherwise modified to meet the maximum 4' fence height limit, within three months of the Board's action.
3. **V-2015-14: HUGH & KIM BLOOMFIELD** - appeal for variances to: 1) increase the maximum number of parking spaces from 2 to 8 for a single-family residential use; and 2) to decrease the required setback for a detached accessory structure from 18" to 0", in order to align the new garage with an existing historic garage in a Two Family Residential (R-2) zone, at 436 W. Third Street (Council District 1).

The Staff Recommends: **Approval**, for the following reasons:

- a. Granting the requested variances should not adversely affect the subject or surrounding properties; will not cause a health, safety or welfare problem; nor will it alter the character of the general vicinity. The garage will be totally to the rear of the property, between two properties that have large, vacant rear yards.
- b. Granting the requested setback variances will not be an unreasonable circumvention of the Zoning Ordinance, because the parking maximums and setback requirements were written with a more typical and much smaller lot in mind.
- c. The extremely large size and unusual shape of the lot, with an existing non-conforming accessory structure that the Board of Architectural Review has required to be in the same alignment as the new garage, are both unique circumstances that justify the requested variances.
- d. Strict application of the Zoning Ordinance would require that the applicant either abandon the additional parking, or add a second dwelling unit to their home in order to build up to 6 parking spaces. If the variance were not granted, in order for the new garage to meet the BOAR's requirement to align with the historic structure, the garage would not have enough depth to be a functional garage for the applicants'

purposes.

- e. The requested variance is not a willful violation of the Zoning Ordinance; rather, it is a design response to the unique circumstances of this property that were determined during the design phase and review of the proposed garage and home renovation.

This recommendation of approval is made subject to the following conditions:

1. The property shall be developed in accordance with the submitted application and site plan.
 2. All necessary permits shall be obtained by the applicant, including but not limited to, a building permit for the garage prior to construction.
 3. Should any further changes to the garage be desired or necessary, BOAR approval will be required.
4. **V-2015-15: LEWIS & CORY DAVIS** – a request to amend conditions required from a previous BOA case (V-2014-23) to allow a garage and off-street parking within the defined Infill & Redevelopment Area in a High Density Apartment (R-4) zone, at 139 Bruce Street (Council District 1).

The Staff Recommends: **Approval of a modification to the previously approved variance, regarding the third condition**, for the following reasons:

- a. The applicant has stated that there is a need for on-site parking as a reasonable accommodation under the Americans with Disabilities Act and the Federal Fair Housing Act.
- b. A modification to the required third condition, allowing an option to design on-site parking that will not interfere with public safety, is a reasonable accommodation from the strict requirements from the previous approval by the Board.

This recommendation of approval is made subject to the following conditions:

1. The property shall be developed in accordance with the submitted application and a modified site plan that removes the proposed garage.
2. All necessary permits shall be obtained by the applicant, including but not limited to, a building permit for the residence prior to construction.
3. There shall be no driveway, garage, or other off-street parking space proposed on the subject property, unless such parking area is designed to be in an unenclosed space with the architecture of the building being designed in such a way that it does not interfere with the sight triangles of parked vehicles.

D. Conditional Use Appeals

1. **C-2015-8: LEXINGTON UNIVERSAL ACADEMY** – appeals for a conditional use permit to expand the school building (gymnasium) in an Agricultural Urban (A-U) zone, at 4580 Nicholasville Road (Council District 9).

The Staff Recommends: **Approval**, for the following reasons:

- a. The addition of a gymnasium and cafeteria to the existing school should not adversely affect the subject or surrounding properties. The applicant had been approved in 2007 by the Board for a temporary modular classroom building near the rear of the property that was not installed. The new addition will be located in the area where the modular classroom was to be located.
- b. All necessary public facilities and services are available and adequate for the proposed use.

This recommendation of approval is made subject to the following conditions:

1. That the property be developed according to the submitted application and site plan.
 2. That prior to construction and occupancy, all necessary permits be obtained from the Division of Engineering (grading), the Division of Building Inspection (construction) and the Division of Planning (zoning compliance).
 3. That there be no loss of parking spaces as a result of the proposed addition.
2. **C-2015-9: DMK DEVELOPMENT GROUP, LLC** – appeals for a conditional use permit to construct an assisted living facility in an Agricultural Urban (A-U) zone, at 4210 Nicholasville Road (Council District 4).

The Staff Recommends: **Approval**, for the following reasons:

- a. Granting the request to permit an assisted living facility and nursing home as a conditional use will not adversely affect the subject or surrounding properties. Assisted living facilities and nursing homes do not typically generate high levels of traffic or other activities that are noisy or otherwise disturbing to neighborhoods.
- b. All necessary public services and facilities are available and adequate for the proposed use, including police, fire and EMS services.

This recommendation of approval is made subject to the following conditions:

1. The use shall be constructed and operated according to the submitted application and site plan, except as

- amended by the Planning Commission on a final development plan. If further expansion of the number of beds is needed or desired, it will require Board of Adjustment approval.
2. Landscaping shall be installed along the southern property line at the backs of the homes that front on Toronto Road to be equivalent to the zone-to-zone screening of an R-3 zone to an R-1 zone [Article 18-3(a)(1)(7)].
 3. The applicant shall obtain all appropriate permits prior to construction, including but not limited to a Zoning Compliance Permit and Building Permit, issued by the Divisions of Planning and Building Inspection.
3. **C-2015-10: TRANSYLVANIA UNIVERSITY** – appeals for a conditional use permit to amend a previously approved site plan in a High Density Apartment (R-4) zone, at 331, 333, 345 N. Broadway & 456 W. Fourth Street (Council District 1).

The Staff Recommends: **Approval**, for the following reasons:

- a. Granting the requested conditional use permit should not adversely affect the subject or surrounding properties, as this site can accommodate the proposed dormitories as vital accessory uses to the University. Parking is available and adequate and has not proven to be a problem to the immediate neighborhood in the past, as the University owns and manages about 4 times the required parking on their campus. The University will enhance the existing screening from the surrounding neighborhood by providing a 6' tall privacy fence adjacent to their residential neighbors, while retaining the existing trees that are within the shared property line(s).
- a. The additional dormitory rooms are necessary to the University, as nearly 75% of their total student population lives on campus. Granting the approval will help Transylvania University to achieve the goal for enrollment that is envisioned in their strategic plan. Additionally, providing the basement space will allow for a higher level of amenities that can be offered to the student population.
- a. All necessary public facilities and services are available and adequate for the proposed use, including police and fire protection.

This recommendation of approval is made subject to the following conditions:

1. The property shall be developed in accordance with the approved site plan and application, allowing for slight modifications, if necessary, during the normal permitting process. This will be subject to the review and approval of the Divisions of Historic Preservation, Planning, Building Inspection, Traffic Engineering, and Engineering, as necessary. It is understood that Board approval is required for (but not limited to) any additional buildings or an increase in the total gross floor area.
 2. All applicable permits, including Building Permits to meet the ingress and egress needs for the basement space to the current Kentucky Building Codes, Fence Permit(s), Zoning Compliance Permits, and Certificates of Occupancy, shall be obtained by the applicant from the Divisions of Building Inspection and Planning.
 3. The applicant is allowed up to three years to exercise this conditional use permit, with the ability to phase construction for the expected build-out to occur over a period of time for an additional five years.
 4. The 6' solid wood privacy fence shall be installed in its entirety where adjacent to residential properties with the first phase of development. Repair and or replacement of the fence will be re-assessed with each phase of development.
 5. Any construction on the property at 331 N. Broadway will be subject to review & approval by the Board of Architectural Review.
4. **C-2015-11: IGLESIA EVANGELICA CHRISTIANA ESPIRITUAL** – appeals for a conditional use permit to construct a church in the Agricultural Rural (A-R) zone, at 3696 Hurricane Hall Road (Council District 12).

The Staff Recommends: **Approval**, for the following reasons:

- a. Granting the requested conditional use permit should not adversely affect the subject or surrounding properties. Adjoining or nearby land uses are of an agricultural nature, and are not likely to be disturbed by typical church activities. Since there is an existing residential dwelling on the property, a septic system is already in place, and there is sufficient room on site (following the Health Department's reassessment of the existing septic field,) to permit increased capacity of the proposed system.
- b. All public facilities are existing and adequate to support the proposed use of this property for a church.

This recommendation of approval is made subject to the following conditions:

1. The church shall be established in accordance with the submitted application and site plan.
2. All necessary permits and approvals, including a Zoning Compliance Permit and a Certificate of Occupancy, shall be obtained prior to the commencement of the proposed use.
3. The existing barn and garage, in their present condition, shall not be utilized for human occupancy.
4. Should a future expansion of the church at this location be desired, approval by the Board of Adjustment will be required.

E. **Administrative Reviews**

1. **A-2015-6: SIGNTRONIX** - an administrative appeal of the issuance of a Notice of Violation concerning signage in a Wholesale and Warehouse Business (B-4) zone, at 875 South Broadway (Council District 11).

The Staff Recommends: **Disapproval**, for the following reasons:

- a. The illumination of the subject sign is not kept constant and it has sequential lighting. As such, it is correctly considered as a “flashing or blinking” sign, per the definition found in Article 17-3(d)(4) of the Zoning Ordinance. Flashing or blinking signs are prohibited by Article 17-5(c), the only exception being for permitted informational signs. The subject sign, which contains advertising for a business activity, does not satisfy the definition of an “informational sign,” per Article 17-3(b)(12) of the Zoning Ordinance.
- b. Article 17-7 of the Zoning Ordinance, which identifies the different types of signs permitted by zone, states that “Any sign not specifically permitted shall be deemed as prohibited.” Article 17-7(g) does not list an electronic message display system as a permitted type of signage in the Wholesale and Warehouse Business (B-4) zone. Accordingly, it is correct to consider an electronic message display system in the B-4 zone as a prohibited type of signage. The appellant has acknowledged that the subject sign is an electronic message display system, per the definition found in Article 17-3(d)(5) of the Zoning Ordinance.
- c. While it is correct that window signs are exempt from the need to obtain a permit, per Article 17-4(c) of the Zoning Ordinance, it clearly states (in that same section of the ordinance) that exempt signs are “...subject to applicable restrictions contained within this Article.” Therefore, it is important to install signage in accordance with the full scope of the relevant restrictions, and not based only on selected passages, since such installations involve important business decisions.

2. **A-2015-12: BAYOU BLUEGRASS CATERING, LLC** - an administrative appeal of the denial of a permit to allow a catering service in a Highway Business (B-3) zone, at 861 South Broadway (Council District 1).

Staff will report at the public hearing.

- IV. **BOARD ITEMS** - The Chair will announce that any items a Board member wishes to present will be heard at this time.
- V. **STAFF ITEMS** - The Chair will announce that any items a Staff member wishes to present will be heard at this time.
- VI. **NEXT MEETING DATE** - The Chair will announce that the next meeting date will be March 27, 2015.
- VII. **ADJOURNMENT** - If there is no further business, the Chair will declare the meeting adjourned.